

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 192/2003

New Delhi, this the 5th day of September, 2003

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

D.P.S. Negi
R/o C-II/2404
Vasant Kunj,
New Delhi - 110 070.

...Applicant

(By Shri Jog Singh, Advocate)

Versus

Union of India
Through Secretary,
Ministry of Finance,
Department of Economic Affairs,
North Block,
New Delhi - 110 001.

...Respondent

(By Shri R.N. Singh, Advocate)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J)

Applicant assails respondent's order dated 20.01.2003 placing him under suspension under sub section (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as the 'Rules']. Quashment of the above order has been sought.

2. The applicant who belongs to Indian Economic Service was promoted as Junior Administrative Grade. Applicant was selected for deputation in July, 1997 to the post of Director (Finance & Accounts) in the Department of Tele-communication and was further posted as DGM (Finance & Accounts) in M.T.N.L.

3. Applicant was implicated in a case FIR RC-58(A)/99-DLI under Section 7, 12, 13 (1) & (2) of Prevention of Corruption Act, 1988 read with section 120(b) of the Indian Penal Code. On account of pending investigation, applicant was placed under suspension on 21.12.1999 under Rule 10(1) of the Rules ibid.

4. Applicant preferred a representation for revocation of his suspension on consideration of which the President revoked the suspension and posted the applicant to a non-sensitive post. Applicant in pursuance thereof was posted as DGM (Finance & Accounts) in M.T.N.L. Subsequently, the investigation in CBI case was completed and the chargesheet had been filed before the Special Judge.

5. In this view of the matter by an order dated 20.01.2003, exercising powers under Rule 10(1) of the Rules ibid, applicant on account of pending trial of a criminal charge was placed under suspension, giving rise to the present OA.

6. Learned counsel of the applicant Sh. Jog Singh contends that once a conscious decision has been taken by the competent authority to revoke the suspension of the applicant placing him on a non-sensitive post, subsequent review of the order without reasons offends the doctrine of proportionality as the discretion exercised is not as per the norms laid down as there has been an intrusion on

his fundamental rights. The action of the respondents being unreasonable is arbitrary. He places reliance on a decision of the Apex Court in Srilakha Vidyarthi vs. State of UP, AIR 1991 (SC) 537, to substantiate his plea.

7. Shri Jog Singh contends that the aforesaid action is discriminatory and un-sustainable under Articles 14 & 16 of the Constitution of India as the co-accused Shri M.L. Mahajan, against whom a trial is pending, was placed under suspension on 28.01.2003 and the same having been revoked on 213.6.2003, no fresh order of suspension has been issued in respect of Shri M.L. Mahajan. As the applicant is equally situated, he cannot be meted out differential treatment.

8. Learned counsel, strongly placing reliance on the following decisions of the Apex Court, contends that though suspension is not a punishment yet it is to be resorted to only when adequate and reasonable grounds exist. Resort of second suspension is punitive.

- i) Frank Anthony Public School Employees Association Vs. Union of India & Ors. AIR 1986 (4)SCC 707
- ii) Khem Chand vs. Union of India & Ors. AIR 1963 (SC) 687
- iii) O.P. Gupta vs. Union of India 1987 (5) SLR 288

9. One of the contentions put forth by Shri Jog Singh is that no public interest is involved in placing the applicant under suspension. The applicant had been working for nearly three years on a non-sensitive post and there

are no reasons or apprehension of applicant tampering with the evidence or influencing the witnesses. In absence of reasons recorded for a fresh suspension, the conscious decision of the President in absence of any changed facts and circumstances, on filing the chargesheet, cannot authenticate or justify the suspension.

10. Lastly, it is contended that the applicant now being subjected to a trial which would be unduly prolonged and no useful purpose would be served to indefinitely keep the applicant under suspension.

11. On the other hand respondents' counsel Shri S.Kumar appearing for Shri R.N.Singh contends that the power to suspend is an inherent right of the respondents. Rule 10(1) of the Rules is supported by DOP&T's instructions dated 20.06.1986 which clearly prescribe that in case the criminal trial commences one is to be placed under suspension. Further stating that in public interest, as the applicant has been accused of taking bribe of Rs. 50,000/-, the charges of moral turpitude, the suspension resorted to does not suffer from any legal infirmity.

12. Learned counsel has also produced the relevant file to indicate that due reasons have been recorded in accordance with instructions and law after an advice ⁱⁿ has been tendered by DOP&T. As such the guiding factor of public interest has weighed in the mind of the disciplinary authority to resort to the suspension.

13. In so far as discretion is concerned, it is stated that a right of re-instatement is not a vested right. As such plea of discrimination when the facts and circumstances are different, cannot be sustained in law.

14. In the rejoinder, applicant has re-iterated his pleas taken in the OA.

15. We have carefully considered the rival contentions of the parties and perused the material on record. As crystalized from various pronouncements of the Apex Court, a suspension is not a punishment. While dealing with the powers to place a government employee under suspension, the Apex Court in Capt. M.Paul Anthony vs. Bharat Gold Mines Limited & Ors., 1999 (3) SCC 679 observed as under:

"26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Governments. [See: for example, Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules.] Even under the General Clauses Act, 1897, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss."

16. In Punjab National Bank vs. D.M.Amarnath, 2000(10)SCC 162, Apex Court observed as under :-

"Held in this case, not necessary. It was sufficient if the competent authority had recorded in its proceedings that conditions mentioned in relevant provisions were fulfilled -

Office file which was produced before the Supreme Court showed that disciplinary proceedings were contemplated and criminal case was pending against respondent - Suspension order upheld."

17. Full Bench of the Tribunal in an identically situated case where the reference was as to whether in case of suspension on account of pendency of criminal case involving corruption, instructions issued are ultra-vires or not? have meticulously gone into the issue. The facts of the case are that applicant therein was found accepting bribe and was implicated in a corruption case by CBI. Earlier he was placed under suspension during the investigation but the same was revoked. Eventually on filing of chargesheet before the Special Judge, respondents issued another order placing the applicant under suspension. While dealing with the aforesaid reference, the following observation has been made:

" Thus as regards the second question of law referred to us we notice that Rule 10(1)CCS(CCA) Rules provides a measure of discretion to the Disciplinary Authority in deciding whether or not in certain situations to suspend a Govt. servant accused of misconduct. These Rules have the protection of Article 309 of the Constitution and cannot under any circumstances be stated to be arbitrary. The manner in which the discretion is to be exercised is further clarified in the guiding principles issued by respondents from time to time. Those guiding principles supplement Rule 10 CCS(CCA) Rules and do not supplant or run counter to those rules. They strike a proper balance between the public interest and the private rights of individual Govt. servants. For that reason they are eminently reasonable, and are not arbitrary, whimsical, or capricious. Respondents in issuing the impugned order dated 22.8.1997 after due consideration of the Tribunal's judgement dated 31.07.1997 in OA No. 1449/97 have acted in consonance with Rule 10(1)(b)CCS(CCA) Rules and the accompanying guiding

principles referred to above, and for that reason their action can neither be termed as arbitrary nor tainted with malafide."

18. If one has regard to the above contention put forth by the applicant that second ~~suspension~~^h cannot be resorted to, cannot be sustained as being unfounded. Once the power vests with the authority the same has to be exercised and in judicial review the only scope of interference is whether the exercise of power is arbitrary or not?

19. DOP&T's OM issued on 20.06.1986 laid down the following guidelines:-

"The manner in which that discretion has to be exercised, is set forth in the guiding principles for placing a Govt. servant under suspension, contained in MHA's letter dated 22.10.1964 as amplified by DOP&T subsequently by O.Ms dated 16.2.1985 and 20.0-6.1986. MHA's letter dated 22.10.1964, which is available in Chapter 2 of Swamy's Compilation of CCS(CCA) Rules, 18th Edition, 1989, lays down that public interest should be the guiding factor in deciding to place a Govt. servant under suspension, and the Disciplinary Authority should have the discretion to decide this, taking all factors into account. However, the following circumstances have been indicated in this letter in which the Disciplinary Authority may consider it appropriate to place a Govt. servant under suspension. These are only intended for guidance and are not to be taken as mandatory:-

- (i) Case where continuance in office of the Govt. servant will prejudice the investigation, trial or any enquiry;
- (ii) Where the continuance in the office of the Govt. servant is likely to seriously subvert discipline in the office in which the public servant is working;
- (iii) Where the continuance in offices of the Govt. servant will be against the wider public interest other than those covered by (i) and (ii) such as there is a public scandal and it is necessary to place the Govt. servant under suspension to demonstrate the policy of the

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Govt. to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where allegations have been made against the Govt. servant of the preliminary inquiry has revealed that a *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and or dismissal, removal or compulsory retirement from service."

NOTE(a) to that letter states that "In the first three circumstances the disciplinary authority may exercise his discretion to place a Govt. servant under suspension even when the case is under investigation and before a *prima facie* case is made out".

NOTE(b) to that letter stated that "certain types of misdemeanour where suspension may be desirable in the Four circumstances mentioned, are indicate below:-

- (i) any offence or conduct involving moral turpitude;
- (ii) corruption, embezzlement or misappropriation of Govt. money, possession of disproportionate assets, misuse of official power for personal gain;
- (iii) serious negligence and dereliction of duty resulting in considerable loss to Govt.;
- (iv) desertion of duty;
- (v) refusal or deliberate failure to carry out written orders of superior officers".

20. As per DOP&T OM dated 16.2.1985 a strong justification has been observed for placing a government servant under suspension, who had been caught red handed, accepting illegal gratification in a trap case. The aforesaid is justifiable to make the Anti-Corruption measures more effective.

21. This is with a view to create desired impact in the mind of the public that the Government is serious in dealing with the cases of corruption.

22. DOP&T's OM dated 20.06.1986 ibid desires placing a Government servant under suspension on a specific act of corruption involving moral turpitude immediately after filing of the chargesheet.

23. Apex Court in B.K. Mohanthy vs. UOI, JT 1994(2)SC 51, while quashing the orders of the Tribunal, held that interference in the matter of suspension pending inquiry in respect of a person when he is charge-sheeted under Section 7 of the Prevention of Corruption Act, cannot be justified.

24. Contention put forth by the applicant taking resort to the Apex Court decision as to arbitrary and un-reasonable exercise of power by the respondents, the Apex Court in the case of UOI vs. G. Ganayutham, JT 1997 (7) SC 572 has held that while dealing with Wednesbury test of reasonableness and on its application the correctness of choices made by the competent authority amongst various alternates cannot be gone into the substitution for a decision of administration is not warranted unless it is illegal per se and suffers from procedural improprieties.

25. Rule 10(1) of the Rules clearly empowers the competent authority to place a government servant under suspension when a case against him is proceeded in trial. As per 1986 instructions of which vires has already been upheld by the Full Bench are the guiding principles supplanting Rule 10 of the Rules, striking a proper balance

between public interest and private rights of individual government servant. Instructions are reasonable and are neither arbitrary nor irrational. As per the aforesaid instructions, a person, against whom an offence has been alleged on filing of chargesheet before the competent court of criminal jurisdiction on moral turpitude or corruption charges, is necessarily to be placed under suspension. There is no discretion left with the authorities to act otherwise. The contention that the suspension places an intrusion to the fundamental rights of the applicant, cannot be countenanced as suspension is not a punishment. The object of placing an employee under suspension who is charged with corruption in a criminal case is to ensure that wrong signals may not be sent to others, lest would be an ante-thesis to the public interest and rather be averse to it.

26. The case in hand involves applicant in a corruption case on charges of accepting bribe at the highest level of Rs. 50,000/-. Though merely lodging of an FIR is not proof of the guilt, yet a prima facie view could be taken. Corruption charges against a government servant cannot be taken lightly.

27. The Full Bench decision in all fours covers the present case and we respectfully follow the same.

28. The contention of the applicant that once conscious decision has been taken by the President revoking the suspension and to place the applicant on a

non-sensitive post does not preclude the same authority to place the applicant under susension which would not act as an estoppel. In our considered view the suspension resorted to against the applicant is not a second order but an order passed independently under Rule 10(1) on account of filing of chargesheet before the criminal court against the applicant. Earlier, as the investigation took time, the applicant's suspension was revoked but on filing charge-sheet and on the basis of the report submitted by CBI the conscious decision has been taken by the authorities to place the applicant under suspension during the trial keeping in view the corruption charges and moral turpitude involved. This is in public interest. The interest of an individual has to give way to it. Moreover, suspension is not a punishment. It is a preventive measure to ensure that the official using his position may not hamper the investigation or trial or influence the witnesses being in public office with all available means. It is expected of him to avoid such situation. The suspension resorted to is guided by the instructions and, therefore, cannot be found fault with. Recently while overturning the decision of the High Court, Apex Court in UOI vs. Rajiv Kumar, JT 2003 (5) 617, set aside the decision of the trial court where Rule 10(4) of the Rules was found to be applicable as far as suspension is concerned till the detention deeming it to be a legal fiction. It is held that deemed suspension continues even after release from custody. However, in so far as continued suspension is concerned, it is observed that if plausible reasons exist

and if the authorities feel that suspension needs to be continued long period would not invalidate it.

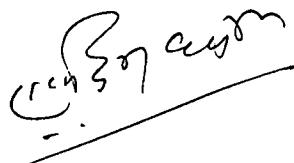
29. As per rule 10(5) of the Rules ibid an order of suspension remains in force until it is modified or revoked. It does not preclude the competent authority from continuing the suspension for the reasons to be recorded in writing. As such resort of the respondent to place the applicant under suspension is within the ambit and power vested in them by virtue of the statutory rules.

30. On perusal of the records submitted by the respondents before placing the applicant under suspension it is revealed that sufficient deliberations had taken place and reasons have been recorded. The reasons are in consonance with the guidelines and in public interest. If a power exists, the same is to be exercised. On submission of charge-sheet before the trial court entails suspension. Merely because the earlier suspension, which was on account of investigation and its revocation would not vest the applicant a legal right to continue without suspension if subsequently the situation changes and warrants resort of suspension. There cannot be an estoppel against a statute or law. Moreover, on conclusion of the criminal trial and on acquittal on merit, applicant would be compensated in terms of consequential benefits.

31. Right to be in service is not a vested right. Moreover suspension does not sever off relationship of a government servant with the Government. It is only a

temporary suspension of discharge of his duties. Unless resorted to arbitrarily or in violation of rules as an unfair act interference by this court in a judicial review is uncalled for.

32. In the result for the foregoing reasons finding no infirmity in the order passed by the respondents OA is bereft of merit and is accordingly dismissed. No Costs.



(R.K.Upadhyaya)
Member (A)



(Shanker Raju)
Member (J)

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